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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DELPION INDUSTRIES, LLC dba GEL-PAK, a
Delaware limited liability company,

Plaintiff,

v.

INTERNATIONAL TEST SOLUTIONS, INC., a
Nevada corporation; INTERNATIONAL TEST
SOLUTIONS, INC., a California corporation;
JOYCE FREEZE, an individual; and ALAN E.
HUMPHREY, an individual,

Defendants.

Case No. CV-11-01338 PSG

**STIPULATION TO CONTINUE
DISCOVERY CUT-OFF DATE FOR
CURRENTLY PENDING NON-EXPERT
DISCOVERY, TO EXTEND EXPERT
DESIGNATION DATES AND [PROPOSED]
ORDER THEREON**

Judge: Hon. Paul S. Grewal,
United States Magistrate Judge

AND RELATED CROSS-ACTION

Plaintiff and Counter-Defendant Delphon Industries, LLC dba Gel-Pak ("Delphon") and Defendants International Test Solutions, Inc., a Nevada corporation ("ITS"), International Test Solutions, Inc., a California corporation, Joyce Adams (sued herein as "Joyce Freeze") and Alan E. Humphrey (collectively "Defendants") hereby stipulate to an order permitting the following depositions to be taken on the following dates notwithstanding the December 13, 2011 discovery cut-

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off date specified in the Court's Case Management Order for non-expert discovery. The Parties to this stipulation hereby agree and stipulate that the dates for disclosing experts and rebuttal experts as well as the deadline for completion of expert discovery should also be shifted approximately one month from the dates specified in the Court's existing Case Management Order as specified below. Good cause exists to modify the Case Management Order to permit the depositions set forth in this stipulation to be taken at a time after the non-expert fact discovery cutoff because:

- A. each of the depositions scheduled herein was noticed prior to the cutoff date for non-expert fact discovery;
- B. the unavailability of witnesses precluded the depositions from going forward on dates prior to the discovery cutoff;
- C. part of the relief sought in Defendant's ITS's Motion to Compel and for a Protective Order ("Motion") currently set for hearing before the Court on January 3, 2012, alleging Delphon's failure to serve a statement identifying and disclosing its trade secrets at issue in this action with reasonable particularity in compliance with California Code of Civil Procedure section 2019.210, and Delphon's alleged failure to serve a complete and non-evasive answer to ITS's Interrogatory No. 12, would, if granted, preclude Delphon from conducting discovery; and,
- D. despite the Parties' effort to meet and confer to resolve the matters raised in ITS's Motion, the Parties were neither able to determine a mutually satisfactory stipulated schedule to have the matter heard on shortened time nor on the Court's December discovery hearing calendar.
- E. Delphon contends it learned during a December 13, 2011 deposition, the identity of an ITS employee, Jim Duvall, who may have information relevant to this action, and Delphon was unable to notice his deposition prior to the discovery cutoff.
- F. ITS intends to supplement its document production prior to the depositions of the ITS witnesses, and ITS contends Delphon needs to supplement its document production before depositions of Delphon witnesses.

1 Good cause also exists to shift the dates for designating experts, rebuttal experts and the expert
2 discovery cutoff because information gathered in the depositions and supplemental productions
3 anticipated and set forth in this stipulation will be relevant to expert discovery and the preparation of
4 expert reports.

5 In light of the foregoing, Delphon and Defendants (collectively the "Parties") hereby stipulate
6 and agree to an order modifying the Case Management Order in this action as follows:

7 1. Delphon may take the following depositions on the following dates:

- 8 a. Joyce Adams: January 17, 2012
- 9 b. Gene Humphrey: January 20, 2012
- 10 c. Jerry Broz: January 30, 2012
- 11 d. ITS's FRCP 30(b)(6) witness: January 26, 2012.

12 2. Defendants may take the following depositions on the following dates:

- 13 a. Darby Davis: January 18, 2012
- 14 b. Delphon's FRCP 30(b)(6) witness: January 26, 2012.

15 3. The Parties each reserve whatever rights they may have with respect to any deposition of
16 Mr. Duvall;

17 4. The depositions stipulated to in paragraphs 1 and 2 above may be taken beyond the cutoff
18 date for non-expert fact discovery, but shall in all other respects be subject to any further
19 order of the Court;

20 5. The date to designate experts with reports shall be February 17, 2012.

21 6. The date to designate rebuttal experts with reports shall be March 7, 2012.

22 7. The expert discovery cutoff date shall be March 28, 2012.

23 8. Any motions to compel concerning the fact discovery outlined herein (i.e. the depositions
24 scheduled hereby, the issue regarding Duvall and the supplemental document productions
25 by either party) must be filed no later than February 10, 2012.

1 Dated: December 20, 2011

NIXON PEABODY LLP

2 By /s/ LISA A. COLE
3 GREGORY P. O'HARA
4 LISA A. COLE
5 Attorneys for Plaintiff and Counter-Defendants
6 DELPHON INDUSTRIES, LLC dba GEL-PAK,
7 JEANNE BEACHAM, DARBY DAVIS, SANCHO
8 ADAM AND COMPLETE PROBE SOLUTIONS, INC.

9 Dated: December 20, 2011

10 WINSTON & STRAWN, LLC

11 By /s/ DEAN A. MOREHOUS
12 DEAN A. MOREHOUS
13 Attorneys for Defendant
14 INTERNATIONAL TEST SOLUTIONS, INC.

15 PURSUANT TO STIPULATION, IT IS SO ORDERED:

16 DATE: 12/27/2011

Paul S. Grewal

17 PAUL S. GREWAL,
18 United States Magistrate Judge

GENERAL ORDER 45 CERTIFICATION

I, Lisa A. Cole, hereby attest pursuant to N.D. Cal. General Order No. 45 that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: December 20, 2011

NIXON PEABODY LLP

By /s/ LISA A. COLE
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Attorneys for Plaintiff and Counter-Defendants
DELPHON INDUSTRIES, LLC dba GEL-PAK,
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INC.